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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,790	10/17/2003	Roy E. Hook	WEN 208	9866
2555	7590	01/06/2005	EXAMINER	
KREMBLAS, FOSTER, PHILLIPS & POLICK 7632 SLATE RIDGE BOULEVARD REYNOLDSBURG, OH 43068			OKEZIE, ESTHER O	
			ART UNIT	PAPER NUMBER
			3654	

DATE MAILED: 01/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/687,790	HOOK, ROY E.
	Examiner Esther O. Okezie	Art Unit 3654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____.

DETAILED ACTION

Response to Amendment

1. The amendment filed on 11/12/2004 and the remarks presented therewith have been carefully considered. However, they are not deemed to be fully persuasive.

Claim Rejections - 35 USC § 112

1. Claims 18-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether the applicant is attempting to claim a grill for cooking "food workpieces" or a transfer tool for the "food workpieces." The metes and bounds of the claimed invention, the food transfer tool, are not clearly set forth since the limitations rely on the structure of an unknown item.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoffman. Hoffman discloses a butler's tray dating back to 1859 that is suitable for transferring "food workpieces" including hamburgers as acknowledged by the applicant and dishes as disclosed by Hoffman.

4. Regarding claim 1, Hoffman discloses a tray having:

- a. An elongated, rigid workpiece-receiving panel having a length greater than its width, the workpiece-receiving panel having at least one exposed, longitudinal, open edge for slidably receiving workpieces (the panel being box A including inner bottom and longitudinal, lengthwise sides for receiving food workpieces or dishes; each side of the panel includes longitudinal open edges as seen in figure 1);
- b. An end support extending transversely from the panel (the widthwise side of box A);
- c. An elongated, hand-grippable handle attached to the end support and extending, in an operable orientation of the tool, above the panel (handle B).

5. Regarding claim 2, Hoffman discloses a workpiece-receiving panel, in an operable orientation of the tool, contoured to have an upwardly concave surface

for containing liquid on the panel (box A). Box of item A is concave upwards in the orientation of the tool.

6. Regarding claim 3, Hoffman discloses a panel with longitudinal bends to form concave contour this being box A with the bends being the sides of the box opposite the end supports.

7. Regarding claim 4, Hoffman discloses an end support including a "liquid impervious wall" extending upwardly from the panel for containing liquid on the panel and preventing spillage from end of the panel. The end supports of box A could evidently contain liquid from spilling from the ends of the panel.

8. Regarding claim 5, Hoffman discloses a panel having parallel, laterally opposite, linear edges for engaging the workpiece-supporting surface. These edges being those of the lengthwise sides of box A.

9. Regarding claim 6, Hoffman discloses a handle that extends substantially the entire length of the panel (handle B and bottom of box A).

10. Regarding claim 7, Hoffman discloses in box A a second end support extending upward from the panel wherein both end supports includes a liquid impervious wall extending upwardly adjacent the panel for containing liquid on the panel and preventing spillage from ends of the panel.

11. Regarding claim 8, Hoffman discloses handle B extending between and attached to both end supports.

12. Regarding claim 9, Hoffman discloses in box A a workpiece-receiving panel, in an operable orientation of the tool, is contoured to have an upwardly concave surface for containing liquid on the panel.

13. Regarding claim 10, Hoffman discloses a panel with longitudinal bends to form concave contour this being box A with the bends being the sides of the box opposite the end supports.

14. Regarding claim 11, Hoffman discloses a panel having parallel, laterally opposite, linear edges for engaging the workpiece-supporting surface. These edges being those of the lengthwise sides of box A.

15. Regarding claim 12, Hoffman discloses handle B that is parallel to the panel of box A.

16. Regarding claim 13, Hoffman discloses the panel (bottom of box A), end supports (width-wise sides of box A), and handle (handle b) are formed integrally or joined together.

17. Regarding claims 18-21, it is noted that although Hoffman does not include dimensions the tray would be at least 50% to 80% the width of some grill cooking surfaces or substantially the same width of some grill cooking surfaces.

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claim 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman.

20. In regard to claims 14-17, Hoffman discloses a tray:

wherein the workpiece-receiving panel, in an operable orientation of the tool, is contoured to have an upwardly concave surface for containing liquid on the panel (box A);

and has parallel, laterally opposite, linear edges for engaging the workpiece supporting surface (lengthwise sides of box A);
a second end support also extending transversely from the panel (widthwise sides of box A);

both end supports including a liquid impervious wall extending upwardly from the panel for containing liquid on the panel and preventing spillage from ends of the panel (widthwise sides of box A); handle attached at its opposite ends to the end supports (handle B).

21. Hoffman does not disclose the dimensions of the tray wherein the panel has a length to width aspect ratio of at least 5:1. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to construct the butler tray wherein the lower panel or bottom of the box was narrow enough to pass through doorways, receive rows of dishes and be packed away in a narrow tight space (lines 30-37, column 2). This would necessitate constructing the butler tray wherein the lower panel had a length to width aspect ratio of at least 5:1. Constructing the panel not at least a length to width aspect ratio of 5:1 would make the tray either too narrow to receive dishes or too long to pass through doorways.

Response to Arguments

Applicant's arguments filed 11/12/2004 have been fully considered but they are not persuasive.

In response to the applicant's argument about the 35 USC 112 rejection that has been made and that no grill structure is positively recited and therefore the grill structure is not part of the invention. It is puzzling to the examiner why the grill structure which is unknown and unclaimed has been used to limit the

claimed invention. The resulting limitation of the invention does not clearly set forth the metes and bounds of the patent protection desired because the structure, dimensions, size, shape, etc. of the nebulous grill that the invention depends upon is unknown. It is noted that the applicant has requested any suggestion from the examiner in order to overcome the rejection. The suggestion is as follows: Any reference to an unclaimed, unknown structure to limit the claimed invention should be removed to avoid ambiguity and establish clear patent protection that is desired.

In response to the Applicant's argument that the claimed invention differs from the patent of Hoffman in that the food workpieces can be slid on and off the panel and there is no flange, wall, or barrier to block entry of a food workpiece onto the panel or to prevent it from being slid off, the limitations on which the Applicant relies are not explicitly stated in the claims. It is the claims that define the claimed invention, and it is claims, not specifications that are anticipated or unpatentable. *Constant v. Advanced Micro Devices Inc.*, 7 USPQ2d 1064, also MPEP 2111.

Furthermore, as claimed the panel (10) of the invention includes parallel bends (20 and 22). The edge (24) is the part of the parallel bends of the panel that provides "at least one exposed, longitudinal open edge for slidably receiving workpieces." The invention of Hoffman includes these parallel lengthwise bends and these bends or sides include "at least one exposed, longitudinal open edge for slidably receiving workpieces." The applicant has not set forth limitations in

the claims to the angle of the bends in the panel, which would limit against walls, barriers, or flanges.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (703) 305-0433. The examiner can normally be reached on Mon-Fri 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A Matecki can be reached on (703) 308-2688. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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